

*Corp. Tax Determinations*  
**BUREAU OF LAW  
MEMORANDUM**  
*Elmwood Arms, Inc.*

A-2

TO: Commissioners Murphy, Macduff and Conlon

FROM: E. H. Best, Counsel

SUBJECT: In the matter of the application of  
Elmwood Arms, Inc. for revision or  
refund of franchise taxes under  
Article 9-A of the Tax Law for the  
fiscal years ended September 30, 1962,  
1963 and 1964

A hearing with reference to the above matter was scheduled to be held February 2, 1967 at which time the secretary-treasurer of the taxpayer appeared and waived a formal hearing.

The issue involved in this matter is whether the method of evaluating business capital upon which franchise taxes were computed was in error.

The Tax Commission used the book value of the assets of the taxpayer in computing the average fair market value of business capital. The assets included a building owned by the corporation. The Tax Commission took the position that the fair market value of a building in the course of construction and for a few years after completion should reasonably be expected to be the book value unless specific concrete evidence is presented to the contrary.

The building in question was newly constructed and encumbered by a mortgage guaranteed by the Federal Housing Administration. The taxpayer claims that the fair market value of the building was lower than its book value because the corporation sustained a loss from the rental of it. The taxpayer contended that valuation of the building should be based upon the capitalized net return from it. However, it presented no evidence to substantiate its claim. The taxpayer further claimed that the corporation was not obligated on the mortgage which was a lien on the building apparently contending that its equity in the building should only be considered as business capital in accordance with 20 N.Y.C.R.R. 3.32(b) prior to its amendment. However, the taxpayer did not submit any evidence to substantiate its claim. Although the taxpayer's next contention is rather vague, it appears to urge consideration of the amount of the mortgage which is less than the book value of the building as some criterion of the fair market value thereof.

I am of the opinion that the method used in evaluating the business capital of the taxpayer was correct. Accordingly, I am in agreement with the proposed determination sustaining the imposition of additional franchise taxes.

Please return the file after disposition.

/s/ E. H. BEST  
Counsel

FVD:ca  
Enc. I-17-67

March 15, 1967

OK ml  
LH

STATE OF NEW YORK  
THE STATE TAX COMMISSION

In the Matter of the Applications

of

ELMWOOD ARMS, INC.

for revision or refund of franchise  
tax assessed under Article 9-A of  
the Tax Law for the privilege years  
ended September 30, 1962, 1963 and  
1964.

Elmwood Arms, Inc., the taxpayer herein, having  
filed applications for revision of franchise taxes under  
Article 9-A of the Tax Law for the privilege years ended  
September 30, 1962, 1963 and 1964, and a hearing having  
been scheduled in connection therewith, at the office of  
the State Tax Commission in New York City on October 19,  
1966, which hearing was postponed at the request of Murray  
Seeman, Esq., Counsel for the taxpayer, and rescheduled at  
the office of the State Tax Commission in New York City on  
February 2, 1967, at which time Murray Seeman, who was  
Secretary-Treasurer for each of the years for which appli-  
cations have been filed, appeared personally and having  
waived a formal hearing, and the matter having therefore  
been considered on the entire record,

It is hereby found:

(1) That the taxpayer was incorporated in New York  
April 12, 1961;

(2) That on the basis of reports filed, taxes were  
recomputed July 16, 1965 as follows:

	<u>9/30/62</u>	<u>9/30/63</u>	<u>9/30/64</u>
Business Capital	\$1,083,480.00	\$2,150,587.00	\$1,836,105.00
Tax at one mill	1,083.48	2,150.59	1,836.11
Delinquent payment			
penalty	24.20	0.00	0.00
Total Tax & Penalty	\$1,107.68	\$2,150.59	\$1,836.11

(3) That business capital was computed by averaging the book value of the assets as reported less current liabilities.

Upon the foregoing findings, it is hereby  
**DETERMINED:**

(A) That no competent evidence has been presented by the taxpayer to show that the business capital upon which the taxes were recomputed was in error;

(B) That the taxes and penalty as shown in Finding of Fact #(2) are affirmed as assessed;

(C) That the aforesaid taxes do not include taxes or other charges which are not legally due.

Dated: Albany, New York

this 30th day of March 1967.

**THE STATE TAX COMMISSION**

/s/ JOSEPH H. MURPHY  
**COMMISSIONER**

/s/ JAMES R. MACDUFF  
**COMMISSIONER**

/s/ WALTER MACLYN CONLON  
**COMMISSIONER**